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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,834	08/22/2001	Farhad Barzegar	003493.00246	7341

7590 11/10/2003

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EXAMINER

NGUYEN, PHUONGCHAU BA

ART UNIT	PAPER NUMBER
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2665

7

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/933,834	BARZEGAR ET AL.	
	Examiner	Art Unit	
	Phuongchau Ba Nguyen	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____ |

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

2. The disclosure is objected to because of the following informalities: page 32 of the disclosure, the attorney docket in each number of 39-41 should be deleted and replaced with a corresponding U.S. Application Serial Numbers.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention. Regarding the method claimed, claim 8 is vague and indefinite because it is not clear what is meant by "a fail polling process".

Claim Rejections – 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is

determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1, 4-5, 6, 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Farris (6,154,445).

Regarding claim 1:

Farris (6,154,445) discloses in a broadband communication network, a method for providing fail-safe telephone connectivity between a subscriber server including a telephone and a telephone network facility, comprising switching a connection from the telephone to a broadband communication network interface directly to a telephone network facility line when a fault is detected in the broadband communication network {col.11, lines 44-47}.

Regarding claim 4:

Farris discloses in a broadband communication network, a method for providing fail-safe telephone connectivity between an analog subscriber telephone and a telephone network facility, comprising

connecting the analog subscriber telephone (12) to the telephone network facility (SSP 17) through a connection (14, 16) different from a connection (96, 111) between a subscriber server (92) and the broadband communication network (Internet 50) {fig.2; col.11, lines 44-47}.

Regarding claim 5:

Farris discloses in a broadband communication network including a telephone network facility (SSP 17; fig.2), a method of providing fail-safe telephone connectivity between a subscriber (pc) and the broadband communication network (internet) comprising:

providing a primary digital telephone connection (96, 111) via a subscriber server (92) connected to the broadband communication network (internet 50) {fig.2}; and

providing a backup analog telephone connection (14, 16) directly to the telephone network facility (SSP 17) bypassing the subscriber server (92) when a fault (overload) in the subscriber server occurs {col.11, lines 44-47}.

Regarding claim 6:

Farris discloses wherein the primary digital telephone connection (96, 111) comprises connecting a modem (112 in 92; fig.3) at the subscriber server (92) to the telephone network facility (SSP 17){Fig.2}.

Regarding claim 8:

Farris further discloses comprising detecting fault in the subscriber server by identifying a failed polling process (overload at internet) {col.11, lines 44-47}.

Regarding claim 10:

Farris further discloses wherein the fault in the subscriber server is a modem failure (overload) {col.11, lines 44-47}.

Claim Rejections – 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

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would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farris in view of McKinnon (6,175,565).

Regarding claims 2-3:

Farris does not disclose the claimed invention. However, in the same field of endeavor, McKinnon (6,175,565) disclose wherein detecting a fault in the broadband communication network comprises listening for a status signal from the broadband communication network at the subscriber server and determining that a network fault exists if the status signal is not received in a threshold period of time (no response within a time period){col.3, lines 49-59}. Therefore, it would have been obvious to an artisan to apply McKinnon's teaching to Farris's teaching with the motivation being to fasten processing data transmission between phones to network,

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farris in view Henderson (6,101,216).

Regarding claim 7:

Farris discloses wherein providing the backup analog telephone connection (14, 16) comprises connecting an analog telephone (12) to the telephone network facility (SSP 13, 17) on the same line (96, 111, 112) connecting the subscriber server (92) and the telephone network facility (SSP 17). Farris does not explicitly disclose the analog telephone (12) using a different frequency spectrum than the digital telephone. However, in the same field of endeavor, Henderson (6,101,216) discloses a splitter for transmitting analog data at lower frequency and digital data at higher frequency {col.6, lines 16–20). Therefore, it would have been obvious to an artisan to apply Henderson's teaching of standard xDSL features of transmitting analog data at POTs frequency (i.e., 4 kHz or below) and digital data at higher frequency (i.e., above 4 kHz) with the motivation being to provide simultaneously transmissions of data and digital on the same twisted pair line. This is a well known practice in DSL.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farris in view of Akers (6,141,330).

Regarding claim 9:

Farris does not explicitly disclose the claimed invention. However, in the same field of endeavor, Akers (6,141,330) discloses wherein the fault in the subscriber server is a power failure at the subscriber server {col.1, lines 11–31}. Therefore, it would have been obvious to an artisan to apply Akers's teaching to Farris's teaching with the motivation being to prevent data loss in transmission if power is down at internet would cause interruption in the internet.

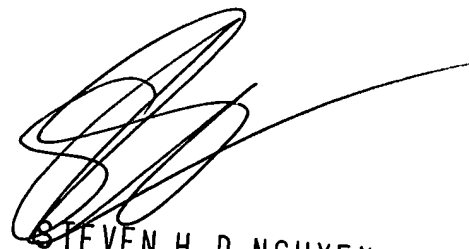
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is 703-305-0093. The examiner can normally be reached on Monday-Friday from 10:00 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 703-308-6602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



Phuongchau Ba Nguyen
Examiner
Art Unit 2665



STEVEN H.D. NGUYEN
PRIMARY EXAMINER